

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON APPROPRIATIONS

Call to Order: By **CHAIRMAN DAVE LEWIS**, on January 8, 2003 at
3:00 P.M., in Room 102 Capitol.

ROLL CALL

Members Present:

Rep. Dave Lewis, Chairman (R)
Rep. Rosalie (Rosie) Buzzas, Vice Chairman (D)
Rep. Edith Clark, Vice Chairman (R)
Rep. John Brueggeman (R)
Rep. Tim Callahan (D)
Rep. Stanley (Stan) Fisher (R)
Rep. Eve Franklin (D)
Rep. Dick Haines (R)
Rep. Donald L. Hedges (R)
Rep. Joey Jayne (D)
Rep. Carol C. Juneau (D)
Rep. Dave Kasten (R)
Rep. Christine Kaufmann (D)
Rep. Monica Lindeen (D)
Rep. John Musgrove (D)
Rep. Jeff Pattison (R)
Rep. Rick Ripley (R)
Rep. John Sinrud (R)
Rep. John Witt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Jon Moe, Legislative Branch
Mary Lou Schmitz, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 1, HB 3, HB 16, 1/8/2003
Executive Action: HB 1, DO PASS 12-7
HB 16 DO PASS 19-0

CHAIRMAN DAVE LEWIS opened the meeting and at this point turned the chair over to **VICE-CHAIR CLARK**.

HEARING ON HB 1

Sponsor: **REP. DAVE LEWIS, HD 55, Helena** said that HB 1 is the money for the operation of the Legislature. The high point to mention is there is no increase in the bill as passed in the 2001 Session. The dollars are basically the same as two years ago, as a good faith effort on the part of the legislative agencies and the leadership to hold the spending down.

Lois Menzies, Executive Director, Legislative Services Division, said Exhibit (1) appropriates money for operation of the legislature over three fiscal years. The total amount appropriated is about \$6.7 million. Of that amount \$2.3 million is for the Senate operations. The House is \$4.7 million and there is about \$700,000 appropriated to the Legislative Services Division. She explained expenses covered in Exhibit 1.

EXHIBIT (aph03a01)

Proponents: None

Opponents: None

Questions from Committee Members and Responses:

In response to a question from **REP. KASTEN**, **Ms. Menzies** said the \$69,000 for TVMT broadcasting represents a contrast between the Legislative Services Division and a production crew to provide the services for this session. They anticipate that next session they would provide similar services and the Committee would have the opportunity to examine those and if there is any expansion, they would certainly have the right to reduce it in the next budget.

REP. JAYNE asked "Since the amounts for 2001 and 2003 are almost equal and that broadcasting is being added, were cuts made across the board with all expenses?" **Ms. Menzies** answered, "Yes." She explained where they were.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 9.7}

REP. BUZZAS asked, "Since the budget was rolled back for every other department in state government to the 2000 level, why were they starting with the 2001 level with this budget?" **REP. LEWIS** replied that there has been a good faith effort to hold the line on the budget. This is a fixed cost operation, as far as the legislature is concerned. There was no session in 2000. The last session to fall within the area would be the 2001 session.

REP. JUNEAU asked **REP. LEWIS** why the bill is for 2003, 2004 and 2005; also what happens to money received from lobbyists etc. for bills. **REP. LEWIS** said, "Traditionally, the appropriation has been for the operations for the biennium, which is fiscal 2003, 2004 and the beginning of 2005. The fees are deposited in the general fund so we have to appropriate that back out."

Closing by Sponsor:

REP. LEWIS closed the Hearing on HB 1.

HEARING ON HB 3

Sponsor: **REP. JOHN BRUEGGEMAN, HD 74, Polson**, explained that in this bill there are about \$8 million of appropriations for fiscal 2003, including about \$1 million for DPHHS and Disability Services Division; about \$2.5 million for DNRC, Forest Fire Suppression costs; Department of Justice \$500,000; OPI, a school BASE Aid, about \$3.5 million; a County Block Grant for \$377,000 and Indirect Cost Recoveries, Commissioner of Higher Education, \$76,000.

Proponents Testimony:

Jane Hamman, Office of Budget and Program Planning.

Kathy Fabiano, Office of Public Instruction.

Larry Fasbender, Deputy Director, Department of Justice.

Colonel Shawn Driscoll, Chief, Montana Highway Patrol
EXHIBIT(aph03a02).

_____ {Tape: 1; Side: A; Approx. Time Counter: 9.7 - 29.6}

_____ Rod Sundsted, Associate Commissioner for Fiscal Affairs, Montana University System.

Opponents Testimony: John Driscoll, Helena.

EXHIBIT(aph03a03).

Questions from Committee Members and Responses:

REP. MUSGROVE referred a question to **Ms. Hamman** concerning the \$1.2 million additional allowance in the Governor's budget and asked if it is still there. **Ms. Hamman** referred to the balance sheet in the Governor's budget. There is an additional \$1.2 million for the Child Support Enforcement Division that will be presented in Health and Human Services. She is assuming that money would be spent. **REP. LEWIS** said the actions that were taken had to do with setting the budget for 2004 and 2005. This appropriation would be in 2003.

REP. JAYNE asked **Mr. Fasbender** how he arrived at the \$250,000 for the lawsuits. **Mr. Fasbender** said that initially, as far as the operations in the Legal Services Division that deals with those lawsuits and at the time they made those estimates, they were unsure as to what the costs were going to be. Ongoing costs have been about \$13,500 a month. They need about \$70,000 for that. The additional \$60,000 is for new faces coming on line now to gear up with expert witnesses, etc. They have reduced it to \$130,000 now because they have better information.

Chris Tweeten, Chief Counsel, Department of Justice, said that the law on attorneys' fees for defendants is that, in most cases, the defendants don't recover attorneys' fees even when there are statutes that provide for them.

REP. JAYNE referred **REP. BRUEGGEMAN** to Section 2 of the bill and the agencies and programs requesting funds. She said, "Obviously there are other departments and divisions in the whole of state government making cuts, why are these particular agencies and programs in the bill versus some of the other hundreds of departments that are affected." **REP. BRUEGGEMAN** said that the agencies submitted their requests to the Office of Budget and Program Planning with respect for their need for supplementals. These were brought forward and approved by the OBPP.

REP. WITT referred to **Mr. Fasbender's** testimony taking \$40,000 out of the Highway Patrol and moving it into the licensing bill. **Mr. Fasbender** said that was an action taken by the last session of the legislature. There was a proposal to cut out the funding for the notification of people when their licenses were going to expire and in order to just cover the postage, this committee came up with different sources of revenue in order to come up with \$140,000 that was needed. One of the places money was taken out was the Prisoner Per Diem, general fund money, and

appropriated to the Motor Vehicle Division. Forty thousand dollars (\$40,000) came from the prisoner per diem but there were other sources used for the balance.

REP. FISHER referred to school lands and the ability for the DNRC to get in for wood cutting to get more funds for the schools off the school lands' property. They have done an outstanding job wherever they can. **Bud Clinch, Director, Montana Department of Natural Resources and Conservation** said that the initial process is relatively clear in terms of how the appeals go to those decisions. Typically, on state timber sales that are litigated in district court, the appellate process would go to the Montana Supreme Court. The U.S. Forest sales have been appealed with the federal judge in Missoula, the Circuit Court of Appeals for those solutions, but he has no suggestions on how to improve that process with the federal government at this time.

REP. SINRUD asked **Mr. Clinch** to explain why the spending went over \$5 million for DNRC. **Mr. Clinch** said the department does not appropriate money for fire suppression. It has historically been handled with the supplemental process. During the time of emergency they respond and mobilize forces and pay for them during the interim with their operating expenses and then come back for a supplemental to pay for it. These are actual incurred expenses for the current fiscal year with minor adjustments for a projection for spring 2003 fires that have yet to occur.

REP. LINDEEN referred **Colonel Driscoll** to Exhibit 2 which shows nine counties that do not have prisoner per diem rates. **Colonel Driscoll** said that they have not completed contract negotiations with some of the counties.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 28.4}

In answer to a question from **REP. PATTISON**, **Mr. Clinch** said, "The fire season for 2003 usually occurs in the summer months. A fiscal year would go to July 1 so somewhere in the sessions they have to find appropriations for the current fiscal year."

REP. SINRUD asked **Colonel Driscoll** why there was such a dramatic rate increase Exhibit 2, page 2, Sheridan County. **Colonel Driscoll** replied that those rates are negotiated by the Department of Corrections and whatever they negotiate, they end up paying.

REP. KASTEN said in a recent business quarterly, there was an article about the management of the forests in ways to utilize lumber marketing funds. There are costs that should be better managed. **Mr. Clinch** said the question raised about forest

management and the issues associated with commodity production, are those revenues for increased fire risks. The money for the supplementals are specifically related to those responsibilities associated with the state. To protect state and private lands is the DNRC responsibility. That is a small "piece of the forest pie" in Montana and certainly is separate from the whole issue about forest land management.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 7}

In response to a question from **REP. BUZZAS** concerning DUI laws, Exhibit 2, **Colonel Driscoll** said they left it to the officer's discretion concerning DUIs as to who might create a significant hazard and the officer's concern that people would go back out and become involved in a crash, injuring themselves or others. **REP. BUZZAS** asked if they would be able to cut this cost down, prisoner per diem, at the other end by getting those people into treatment earlier or getting them through the justice system earlier. She asked if there is access to information that the committee could analyze that situation? **Colonel Driscoll** said he will get it.

REP. HEDGES said the Transportation Department has those figures. **CHAIRMAN LEWIS** said he was not sure they would have the figures that **REP. BUZZAS** is looking for about how many would be jailed per diem.

REP. WITT referred **John Driscoll** to the many years he served in the Legislature and asked if supplemental funding was used then. **Speaker Driscoll** said, "Yes, it is a common tool but if you read the statute that underlines the supplemental funding, it relates to money that moves around the biennium. The supplemental statute was never intended to be used as a deficit draw on the next biennium. The numbers were smaller then." His recommendation for now is to Table this bill and take a hard look at it and basically have the Legislature do a performance review on itself, look at the constitutional (statutory) language, then have the professionals that are non-partisan decide. He felt that right now there are too many moving parts and it is a very shaky situation.

{Tape: 2; Side: A; Approx. Time Counter: 7 - 13.9}

REP. WITT referred the supplemental question to **CHAIRMAN LEWIS** who said, "When **Speaker Driscoll** was back in the House there were even bigger bills because they were dealing with explosions in Medicaid etc. This is actually a fairly conservative one for this year. **Speaker Driscoll** does bring up a good point about the cash balance and the cash position. They should have **Terry**

Johnson, Principal Fiscal Analyst come in and visit with that as well. It is not entirely an invalid point as to whether or not, if we have a negative fund balance at the end of the year, have we improperly expended money for the next biennium?" He didn't think so but is willing to bring in **Mr. Johnson** when they do executive action.

REP. WITT deferred to **REP. SINRUD** who referred to Legislative Budget Analysis 2005 Biennium, Volume 1, page 91, Figure 1.

Closing by Sponsor:

REP. BRUEGGEMAN closed the Hearing on HB 3.

HEARING ON HB 16

Opening Statement by Sponsor: **REP. HAINES, HD 63, Missoula**, said this is truly a type of supplemental funding bill for wildfire suppression. He gave an overview of Exhibit 4.

EXHIBIT (aph03a04)

Proponents' Testimony:

Bud Clinch, Director, DNRC, said that within the state of Montana and fire protection, responsibilities fall to a number of entities: local governments, the state of Montana, BLM, Forest Service and other fire districts. The landscape of Montana is divided into all those jurisdictions. **Mr. Clinch** referred to Exhibit 4 and explained those figures.

{Tape: 2; Side: A; Approx. Time Counter: 13.9 - 28}

Opponents' Testimony: None

Informational Witness:

Jane Hamman, Office of Budget and Program Planning said this bill is part of the Governor's Executive Budget and they do request speedy action on this because of the cash flow problems in the Department of Natural Resources.

Questions from Committee Members and Responses:

REP. LINDEEN asked **REP. HAINES** why this was not included in HB 3, the other supplemental bill. **REP. HAINES** said, "Normally this bill would be first so money could be put back into the agency as quickly as possible."

{Tape: 2; Side: A; Approx. Time Counter: 28 - 29.5}

REP. BUZZAS asked **Mr. Clinch** if the National Guard was used this past fire season. **Mr. Clinch** said that they didn't use the National Guard in Montana because there was not much of a fire season. This supplemental is for the season preceding that. Even when the National Guard is used, that is an expense they incur because the National Guard is not the cheapest fire fighting source. The National Guard is called in when available resources, state, federal and private are not available to meet the level of emergency that's occurring. The level of pay they receive is the same as other fire fighters of similar job descriptions.

In answer to a question from **REP. JAYNE**, **Mr. Clinch** said they have seen very little impact of services because of the remaining operating budget for those divisions for the remainder of this biennium. However, if this bill doesn't pass, they would be without funding for the majority of the department by March 1.

CHAIRMAN LEWIS said what they did was use the money for the second half of the year for those divisions. They operated normally up until this point. Money was borrowed for what they would have spent between now and June 30 to cover fires. This supplemental will replace that money. If the department doesn't get the supplemental, they are out of business by at least March 1. Up until this point, it has had limited impact on their operations, because they have operated on the assumption that they would get the supplemental.

REP. PATTISON asked **Mr. Clinch** if he had explored any other possibilities for funding. **Mr. Clinch** said that, relative to the state lands under their jurisdiction, they have a very aggressive program in terms of trying to minimize the fire risk, do an appropriate timber harvest to reduce that risk and to generate revenue off those products. Fire suppression responsibilities that the state has are mostly on private property, both forested land and on range lands, to the extent that they can suggest good management practices that reduce those fuel levels. In several of the last legislative sessions they have had at least start-up discussions about what is the appropriate mechanism to fund fire suppression. The questions are, who is benefitting from the millions of dollars they are spending and where is the appropriate avenue to receive those funds, because of the continuing escalating fire costs? The Department stands ready to enter into those discussions.

REP. PATTISON referred **Gary Hamel, Legislative Fiscal Division**, to Exhibit 1, 1-6-03, and was asked to touch on some highlights

for alternative funding. **Mr. Hamel** said he has worked with **Mr. Clinch** on a number of different alternatives for fire funding. The legislature typically funds fire suppression costs through the supplemental appropriation process which is part of today's discussion. One alternative could be a trust fund that could be built through various funding. Some ideas could be a fee on the board feet of timber that was harvested, a license plate fee or a number of other different fees that could be used to fund such a trust. It would have the effect of taking that funding off of the general fund and it would be a state special revenue.

In answer to a question from **REP. JUNEAU**, **Mr. Clinch** said that the way the process has historically been, is when he says "reimbursed" it comes back and deposited in the general fund. The Department has to cash flow all those things in the interim.

Closing by Sponsor:

REP. HAINES closed the Hearing on HB 16.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 29.2}

EXECUTIVE ACTION ON HB 1

Motion: **REP. LINDEEN** moved that **HB 1 DO PASS**.

Discussion: **REP. BUZZAS** asked why this particular budget is being set up at the 2001 level when everything else in the subcommittees is starting at the 2000 level. **CHAIRMAN LEWIS** said the last session before 2001 would be the 1999 session.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 3.1}

REP. MUSGROVE said that part of the reason he will vote against this is the same reason he voted against it last time because, in this, there is a pay raise and he is not sure they deserve a pay raise.

CHAIRMAN LEWIS said a sitting legislature cannot set its own salary.

REP. FRANKLIN said she has some trepidation and thinks it is legitimate.

REP. SINRUD said, "In the Special Session there was a bill to reduce the legislative pay for this session and the committee voted it in; so yes, they did reduce their pay."

CHAIRMAN LEWIS said the House passed it but the Senate killed it.

REP. HEDGES asked if this was an example of zero base budget building. **CHAIRMAN LEWIS** said that they do this as a zero base approach. The legislative staff calculates the number of legislators by a rate of pay. They calculate the number of staff and the rate of pay etc. The agency budgets have historically been based, plus some inflationary increase.

Vote: Motion carried 12-7 with **REPS. BUZZAS, CALLAHAN, FRANKLIN, JAYNE, JUNEAU, KASTEN** and **REP. MUSGROVE** voting no by roll call.

EXECUTIVE ACTION ON HB 16

Motion/Vote: **REP. HAINES** moved that **HB 16 DO PASS**. Motion carried unanimously 19-0 by roll call.

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Jon Moe, Legislative Staffer, said on the issue that was discussed on HB 3, questions regarding the cash position, Volume 1, Legislative Budget Analysis, page 134 discusses part of that issue.

CHAIRMAN LEWIS adjourned after several announcements.

House Standing Committee Report, 1/09/03, Executive Action taken on 1/08/03 is void because **CHAIRMAN LEWIS** did not sign it as he felt it needed more work.

ADJOURNMENT

Adjournment: 5:12 P.M.

REP. DAVE LEWIS, Chairman

MARY LOU SCHMITZ, Secretary

DL/MS

EXHIBIT (aph03aad)